IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1216 of 2002

Rashtriya Chemicals & Fertilisers Ltd.. Petitioner

versus

Mubashera M. Sayed & Anr. .. Respondents

...

Mr.Girish Kulkarni i/b M/s.Bodhanwala & Co. for the petitioner.

Mr.N.M. Ganguli for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 11th July 2005.

P.C.:

1. By this petition, petitoner takes exception to the judgement and order dated 23rd February 2002 passed by the Commissioner for Workmens Compensation and the Judge, Labour Court, Mumbai declining to set aside the ex-parte judgement and order dated 23rd November 2001.

2. The respondent no.1 is a widow of Mansur Ali (for short 'the deceased') who was employed with the petitioner Company. On 26th December 1997, while on work, the deceased collapsed suddenly and died. According to the respondent, the deceased died on acount of of chest paid suffered on account of an employment injury while according to the petitioner, the deceased died of a cardiac arrest following a massive heart attack. The post mortem report shows

that the deceased died of a coronoary artery heart disease.

3. The respondent filed an application under Workmens Compensation Act claiming compensation alleging that the deceased had died on account of employment injury. The petitioner resisted the claim alleging that the death was due to natural causes, a massive heart attack. When the matter came up for hearing, the petitioner and its advocate were absent and Labour Court proceeded to hearing the complaint ex-parte. By a judgement and order dated 23rd November 2001, the learned Labour Judge allowed the

application and granted compensation of Rs.1,79,000/-.

4. The petitioner thereafter filed an application for setting aside the ex-parte judgement and order. In the application, petitioner averred that the petitioner had employed Mrs. Ayesha Somandy as an advocate to defend the case. After filing the written statement petitioner's advocate proceeded on maternity leave in July 2000. All other proceedings handled by were assigned to other advocates. However, inadvertently, the respondent's case remained to be assigned to any other advocate. It was on account of inadvertent mistake in transferring the papers from one advocate to another advocate that the matter was heard ex-parte. The learned Judge who heard the restoration application held that there was no sufficient cause for the petitioner to remain absent. He observed that the petitioner had not given the exact date on which its advocate proceeded on maternity leave and when she returned and that the petitioner had not produced any documentary evidence in regard to that therefore disbelieved the case of the petitioner and dismissed the application. That

judgement is impugned in this petition.

5. I have heard the learned counsel for the parties. I fail to see what kind of documentary evidence the petitioner could have produced to show that its advocate went on leave. A perusal of the reply filed by the respondent to the application for restoration discloses that the respondent has not specifically denied that the petitioner’s advocate was on maternity leave. What was alleged was the petitioner had not filed an authority (vakalatnama) of other advocate for its appearance in the matter. In fact, it was the very case of the petitioner that though the previous advocate had gone on a materniy leave and other advocates were engaged in her place in other matters, through inadvertence, no other advocate was engaged in the present matter. In the absence of specific denial that the petitoner’s advocate was on maternity leave, the said fact was deemed to be admitted and the petitoner was not required to adduce any evidence, much less documentary evidence, to prove the same.

6. I am satisfied that the absence of the petitioner was not deliberate. The petitioner had

engaged an advocate and had even filed the written statement. On the advocate being on maternity leave, other advocates were also engaged in other matters. No advocate was engaged in this matter through inadvertence. Human errors do occur and the petitioner cannot be denied a just opoortunity to attend on account of an inadvertant error which occurred in transmitting the papers from one advocate on maternity leave to another. In the circumstances, the trial Court ought to have condoned the delay and allowed the application.

7. Undoubtedly, the petitioner was negligent atleast in part in not keeping trace of the matter and ensuring the papers reached the new advocate and to ensure that the appearance was filed on petitioner’s behalf. On account of such negligence, respondent is likely to suffer on acount of delay in the decision of the case. The respondent must therefore be sufficiently compensated. The respondent is a widow. She may be required to engage another advocate and has also been required to engage an advocate in this Court also for defending the petition. The respondent must be compensated for all this. In the circumstances, petition is allowed subject to the

respondent paying to the respondent total sum of Rs.20,000/- (Rs.10,000/- as costs in the trial court and Rs.10,000/- as costs in this court) within a period of eight weeks.

8. It is clarified that if the costs are not paid within the stipulated time, petition shall stand dismissed.

9. Rule made absolute to this extent.

D.G. KARNIK, J